

## CITY COUNCIL AGENDA MEMORANDUM

### **SUBJECT:**

Resolution No. 8582 authorizing execution of a renewal of the City's current Electrical Franchise Agreement with Puget Sound Energy.

### **FISCAL IMPACT:**

This action has no direct fiscal impact on the City. Utility rates are established through the Washington Utilities and Transportation Commission.

### **STAFF CONTACT:**

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### **POLICY CONSIDERATION:**

#### **State Law:**

RCW 80.01.040 provides that there are two public entities that have dual jurisdiction over Puget Sound Energy (PSE) within the City of Bellevue: the Washington Utilities and Transportation Commission (WUTC) has the authority under state law to regulate the rates, services, facilities and practices of electrical companies; and the City of Bellevue's franchise authority extends to use of public streets or other public ways for the transmission and distribution of electrical energy.

Pursuant to RCW 35A.47.040, the City of Bellevue has the authority to grant non-exclusive franchises for the use of public streets or other public ways for the transmission and distribution of electrical energy.

#### **Bellevue City Code:**

BCC Chapter 14.20 provides the basic terms and conditions for granting such a franchise.

The City grants and manages franchises with utilities and other providers using the rights of way and other public ways. Franchise agreements are necessary to protect the City's rights to manage and control the rights of way.

#### **Current Franchise Agreement:**

The current franchise agreement was adopted on May 14, 2003 (Ordinance No. 5443, see attached), and absent Council action to renew, would expire on May 14, 2013. The current franchise agreement provides for a five-year extension, upon written request from PSE at least six months prior to expiration, and at Council's sole discretion. The request to renew was received from PSE on November 13, 2012 in compliance with the terms of the franchise.

**BACKGROUND:**

The current electric franchise agreement, adopted in 2003, was developed through extensive negotiation between the City and PSE. The current franchise addresses several items that were not addressed in detail in the previous agreement, which was adopted in 1986. These items, listed below, have resulted in successful coordination of PSE projects, City capital improvements, and development throughout Bellevue. The agreement helps define the conditions under which PSE can install its electric facilities in the public right-of-way.

The following are the highlights of items the existing PSE electric franchise addresses:

1. Permitting/restoration:

The franchise ensures the City's ability to require permits, through which the City can influence the location of facilities (e.g. where cables, vaults, etc. can be installed within the public right-of-way). When facilities are installed in the public right-of-way, permitting ensures the City's infrastructure (roads, sidewalks, etc.) is adequately restored. Furthermore, the permitting requirements help ensure PSE's facilities are not installed in the right-of-way in conflict with City utilities, further protecting the City's assets.

2. Relocation:

As an occupant of the public right-of-way, PSE is subject to relocation if necessitated by the installation of public infrastructure. The franchise lays out the conditions that trigger relocation of facilities, and when PSE is responsible for paying for those relocations. The procedures for relocation (notification requirements, conditions, etc.) are detailed in one of the four memoranda of understanding (MOU) associated with the franchise.

3. Undergrounding:

In some situations, it may be desirable (from the public's perspective and/or PSE's) for the PSE facilities to be undergrounded. The franchise agreement defines who, within the regulations set by the WUTC, pays for this undergrounding. As a result of this negotiated agreement, incorporating the City's Comprehensive Plan policy to have all new facilities (distribution and service lines) undergrounded, the City has been successfully preventing the addition of new aerial power lines in public right-of-way within City limits.

4. Shared Excavations:

This section further protects City assets and helps minimize the impact on the public by requiring PSE and the other franchised utility companies to coordinate their plans for new facilities and install facilities in joint trenches to the extent possible, reducing the impact on the pavement and on the motoring public.

5. Vegetation Management

It is necessary for PSE to maintain the vegetation around its facilities, particularly substations and aerial power lines. The franchise agreement ensures the City is involved in the development and implementation of the Vegetation Management Plan (both for annual maintenance and unanticipated situations requiring immediate remediation). The goal is balancing the sometimes competing objectives of electric reliability, aesthetics, and preservation of tree canopy. As is the case with facility relocations, the Vegetation Management Procedures are laid out in greater detail in an MOU.

The franchise agreement was negotiated with the priorities of performance and reliability, relocation responsibilities, and vegetation management in mind, as well as preserving the City's authority to manage the public rights of way. The final agreement included several Memoranda of Understanding (MOU's) (see Attachment 3), which specifically addressed the following: Relocation of Facilities, Reliability Reporting, Records of Installations, and Vegetation Management. Two of these (Relocation and Vegetation Management) are briefly described above. One of the remaining MOU's requires PSE to provide an annual Reliability Report to the City. PSE is required to provide an annual Reliability Report to the WUTC, but the Bellevue report separates out the circuits that just serve Bellevue. These reporting requirements and the dialogue on annual performance ratings helped lay the groundwork for the reliability study referenced below.

It should also be noted that the franchise agreement only applies to facilities installed in the "franchise area" (i.e. the public right-of-way and any public easements – not private property, such as where substations would be located), and that it is not a vehicle for influencing the design of PSE systems or system expansion. The City's existing review processes (via Land Use and Right-of-Way Use Permits) are what afford staff and the community the opportunity to provide input into the location of the new facilities.

**It is staff's conclusion that, given the effectiveness of the existing franchise in addressing the City's objectives and the risks and uncertainties introduced by commencing a negotiation process, it is in the City's best interest to authorize a five-year renewal of the current Franchise Agreement.**

### **The Electrical Reliability Study**

The first major event following adoption of the franchise agreement was the wind storm of November 2006. The impacts of that storm, coupled with the increased demand for power in the Downtown core in the mid-2000's, led to heightened community concern about the reliability of PSE's system, as well as its ability to meet the growing long-term needs of Bellevue businesses and residents. As a result, Council commissioned an Electric Reliability Study (ERS) in order to better understand PSE's effectiveness in providing adequate and reliable electricity to the City, now and in the future.

The ERS commenced in early 2011, engaging the services of a consultant and including the participation of a community Stakeholders Group, representing Bellevue businesses and residents. Their work resulted in a detailed assessment presented to Council in early 2012, with a detailed report which also delineated their analysis, findings, and recommendations.

Two of the key findings of the ERS report were:

- "There are over 90 circuits in Bellevue and while the performance on individual circuits can vary, the overall system in Bellevue is reliable." (*ERS Report Conclusions, p. 146*)
- "Based on current plans, the City will have an adequate and reliable power supply to meet medium-term (5-10 years) and long-term (10-20 years and beyond) growth requirement." (*ERS Report Conclusions, p.147*)

The full and detailed ERS report can be found at  
[http://www.bellevuewa.gov/pdf/Manager/Final\\_Electrical\\_Reliability\\_Study\\_Phase\\_II\\_Report\\_2012.pdf](http://www.bellevuewa.gov/pdf/Manager/Final_Electrical_Reliability_Study_Phase_II_Report_2012.pdf)

Notwithstanding these findings, and in recognition of the importance of electrical reliability to the quality of life and continued economic vitality of the City, staff asked the consultants for recommendations on ways to work continuously with PSE on maintaining and improving the city's electrical reliability. This request resulted in the recommendations that are summarized on Attachment 1.

Staff will describe the way in which the majority of these recommendations are being incorporated into a Memorandum of Understanding between the City and PSE. This MOU will serve to document and institutionalize those actions, some of which have been ongoing for years. Since PSE and the City had agreed to cooperate on the ERS recommendations already, the preparation of the draft MOU has been proceeding smoothly. The next step is to circulate that document to the ERS Stakeholder Group. Staff aims to finalize the MOU and bring it back to Council for approval in early June. If approved by Council, the MOU would be an addendum to the Franchise Agreement.

**EFFECTIVE DATE:**

If adopted, this Resolution becomes effective immediately upon adoption.

**ALTERNATIVES:**

- 1) Approve Resolution No. 8582 authorizing execution of a renewal of the City's current Electrical Franchise Agreement with Puget Sound Energy, extending the franchise by five years.
- 2) Approve Resolution No. 8582 with amendments.
- 3) Do not approve Resolution No. 8582 which would result in the expiration of the existing franchise, and the need for negotiating a new franchise with PSE, and provide alternative direction to staff.

**RECOMMENDATION:**

Option No. 1, adopting Resolution No. 8582 authorizing execution of a renewal of the City's current Electrical Franchise Agreement with Puget Sound Energy.

**MOTION:**

Move to approve Resolution No. 8582 authorizing execution of a renewal of the City's current Electrical Franchise Agreement with Puget Sound Energy.

**ATTACHMENTS:**

- 1) ERS Recommendations Summary
- 2) Franchise Ordinance No. 5443
- 3) Memorandum of Understanding
- 4) Proposed Resolution No. 8582

**AVAILABLE IN COUNCIL OFFICE:**

Memorandum of Understanding – Facilities Relocation Procedure

## Executive Summary

4. *“What opportunities are available to the City to work with PSE, regulators (WUTC, Federal Energy Regulatory Commission), and other stakeholders to ensure the needs and expectations of Bellevue’s residents and businesses are met relative to the reliability of the power supply?”*

Bellevue’s role as an informed stakeholder requires that the City take an active role in becoming informed on matters affecting the reliability and planning for the electric system in Bellevue. This role includes direct communication with PSE as well as other stakeholders regarding electric service. Specific opportunities for the City to engage as an active stakeholder include:

- **WUTC:** The City has a role in informing lawmakers and commissioners regarding matters that affect reliability. The City also has the opportunity to comment or participate in matters directly affecting PSE and its interaction with WUTC. It may be possible for Bellevue to support measures for investment brought forward by PSE that support its overall City goals for electric system reliability and service.
- **PSE:** The City has many opportunities to proactively interact with PSE on issues related to system reliability, long-term planning, near-term major project planning, Smart Grid initiatives, and emergency planning.

5. *“How can the City measure and monitor whether improvement in reliability is being achieved?”*

This reliability assessment includes recommendations for the City to consider moving forward. Proposed reliability improvement metrics have also been included to assist the City in measuring and monitoring the implementation and effectiveness of these recommendations.

This reliability study provides the analyses and recommendations to support the City in meeting its goals to be an informed and active stakeholder and to ensure that the City has an adequate and reliable electric system now and into the future.

## Recommendations Summary

The outcome of this reliability assessment is a set of recommendations that will support the City’s efforts to meet its stated goals. The recommendations are summarized below:

1. **Conduct Joint City/PSE Reliability Workshops**—The City should conduct an annual reliability workshop with PSE to perform a review of the following topics that relate to reliability in Bellevue:
  - **Specific Circuit Reliability:** The City should request reliability metrics (SAIDI and SAIFI) on a circuit basis. This will provide the City with information regarding the performance of circuits throughout the City and provide a basis for the City to work with PSE to identify appropriate means to improve performance.

- The City should trend circuit performance over time to identify the effectiveness of completed reliability projects (review number of outages and causes to trend improvement). This assessment provides the City with a means of reviewing the overall Downtown performance and performance for specific neighborhoods that have experienced frequent outages (such as neighborhoods with overhead circuits).
  - Equipment Reliability Projects: The City should request a list of the current PSE projects identified for Bellevue (both funded projects in the capital plan and those waiting future funding) to understand the potential reliability improvement efforts for Bellevue.
  - Maintenance and Inspection Program Results: PSE should identify to the City any new items likely to significantly affect the electric system reliability from its review of maintenance and inspection programs during the prior year.
  - System Redundancy Projects: The City should review the design improvements that are being added to the Bellevue system.
  - Automation Installation: The City should review with PSE the automation improvements that are being added in the Bellevue system. The City can monitor the overall upgrades to the system and the degree of system automation.
2. **Joint City/PSE Planning Workshops**—It is recommended that the City engage PSE in an annual planning workshop around future projects. The Comprehensive Plan includes an electric system plan that can serve as the basis for the annual workshop. The workshop should focus on the following items:
- Current growth projections and electric power use in Bellevue
  - Review and update of current plan
  - Actions for capacity projects required to initiate siting and permitting activities within the next 2 years.
- An outcome of the workshop should be an updated plan for inclusion in the Comprehensive Plan (if required) and an action plan to move designated projects forward into siting analysis and/or planning.
3. **Integrated Resource Planning (IRP)**—The City should remain active in the IRP process and should begin to understand potential long-term impacts of this strategy.
4. **Vegetation Management**—The visual review of overhead circuits indicates that there are many substations and lines located in heavily wooded areas. The only way to significantly improve reliability is to perform more comprehensive tree

trimming. The City should review its vegetation policies, specifically in the areas of substations, to look at alternative vegetation approaches.

5. **Community Communications**—City personnel involved in emergency response should meet with PSE to understand the capabilities of the new outage management system (when completed) to assist in communications with the Bellevue community.
6. **Emergency Response Capability**—The City and PSE should consider the development of a more formal process (procedure) related to response and support activities during an outage. The outcome should be an agreement (or procedure) for communication and coordination during large-scale events affecting Bellevue.
7. **Energy Efficiency Improvements**—The City should lead the energy efficiency effort to assist PSE in reaching its long-term electric energy usage goals to help ensure adequate electric power supply during peak power periods for the City. Electric energy savings programs require active outreach to the customers and citizens to support various efficiency initiatives. The PSE long-term plan has a large reliance on reducing the electric energy demand by installing lower power consuming appliances and lighting systems. The City will have a major role to play in terms of City policy and regulations that support efforts that are alternatives to building additional power plants to supply peak power during high demand periods. The City will also have a major role in community outreach.
8. **Undergrounding of Distribution Lines**—The City should investigate opportunities for additional undergrounding of distribution lines through coordination of multiple utility projects and evaluation of local improvement districts. The City's Comprehensive Plan requires undergrounding of new distribution lines and strategies should be developed to increase opportunities to convert overhead lines to underground circuits.
9. **City Interface with WUTC**—Bellevue's involvement with WUTC should be one of informing lawmakers and commissioners regarding matters that affect reliability. This involvement should include:
  - Assigning a designated individual to electric system matters. This individual should remain informed of electric system activities related to WUTC.
  - Developing "white papers" for submittal to WUTC to inform the Commission of issues affecting electric reliability in the City. This provides a means to provide feedback to WUTC without direct response to hearings.
  - Commenting on or participating in matters directly affecting PSE and their interaction with the WUTC.

There are several additional recommendations that can be incorporated into the recommendations listed above. These include:

10. **Smart Grid Strategies**—PSE has identified a series of Smart Grid technology projects that are being considered over the next 2 years. These projects include a range of programs from the base infrastructure required to enable the Smart Grid to specific customer-related efforts. The City should review the overall PSE plan and determine its level of support for the various customer initiatives. The City needs to define a Smart Grid approach that it would like to see implemented in Bellevue, specifically addressing the level of support for customer interface applications, such as customer energy management, demand response, home automation, etc. The City should work with PSE to develop a Bellevue deployment plan consistent with PSE obligations. (Include with Recommendation #1)
11. **Long-Range Planning**—The City and PSE should synchronize their growth projections for the City by frequent information exchange on expected projects, expected timing of projects, and coordination of actions required by PSE and the City to address these projects. This exchange is meant to assist longer-term planning and should occur well in advance of any specific permitting or development activities. (Include with Recommendation #2)
12. **Multi-Utility Planning**—The City should engage with its utility partners to identify new projects (both large and small) to maximize efficiency for projects in the rights-of-way. The City can take advantage of projects that require trenching to place conduit for potential future use of undergrounding. The existence of conduit may allow for more economic alternatives for undergrounding in the future. (Include with Recommendation #1)

Detailed descriptions of these recommendations are included in this report.

## Conclusions

This assessment of the electric system serving the City has shown that electric system reliability is improving and that the programs and projects shown in PSE's planning documents should continue to improve system reliability. However, successful execution of plans, programs, and projects is required to ensure that there is an adequate and reliable electric power system serving the City.

The recommendations offered for consideration by the City are intended to provide a basis for the City to become an informed and active stakeholder relative to decisions and actions required to support continued and improved electric system reliability.



0604-ORD  
5/1/2003

ORDINANCE NO. 5443

AN ORDINANCE of the City of Bellevue, Washington, granting Puget Sound Energy, Inc., a Washington corporation, the right, privilege and authority and franchise to set, erect, construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, under, along and across the franchise area for purposes of transmission, distribution and sale of electrical energy for power, heat, light and any other purpose for which such energy can be used.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. Where used in this Franchise Ordinance (the "Franchise") the following terms shall mean:

1.1 "City" means the City of Bellevue, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.2 "Facilities" means, collectively, any and all electric transmission and distribution systems, including but not limited to, poles, wires, lines, conduits, ducts, cables, braces, guys, anchors and vaults, transformers, switches, meter-reading devices, fixtures, and communication systems; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.3 "Franchise" means the grant of rights, privileges and authority embodied in this Ordinance.

1.4 "Franchise Area" means all rights-of-way for public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired or improved; all rights-of-way for public roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended, and; all City owned utility easements dedicated for the placement and location of various utilities provided such easement would permit PSE to fully exercise the rights granted under this Franchise within the area covered by the easement.

1.5 "Ordinance" means this Ordinance No. 5443, which sets forth the terms and conditions of this Franchise.

1.6 "Party" or "Parties" means collectively the City and PSE, and individually either the City or PSE.

1.7 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.

1.8 "Public Works Project" means, any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Franchise Area or City owned Facilities located on or in the Franchise Area for: parks; roads and/or streets; sidewalks; curbs; pedestrian and/or vehicle traffic; sewers, storm water drains; water Facilities, and; City owned fiber optic cable, conduit or network Facilities.

1.9 "Tariff" means tariff as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

1.10 "Third Party" means any person, party or entity other than the City and PSE.

1.11 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

## Section 2. Grant of Franchise

2.1 Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040 and RCW 80.32.010, the City hereby grants to PSE, subject to the terms and conditions as set forth herein, a Franchise for a period of ten (10) years commencing upon the effective date of this Ordinance and subsequent acceptance of such ordinance and Franchise by PSE. This Franchise is granted upon the express condition that PSE, within thirty (30) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same. If PSE fails to do so within the time frame above, this Ordinance and Franchise shall be null and void. This Franchise may be renewed, at the sole discretion of the Bellevue City Council, for one additional five (5) year period upon the written request of PSE, such request to be submitted not more than two (2) years nor less than one-hundred-eighty (180) days prior to the expiration of the initial ten (10) year term.

2.2 PSE specifically agrees to comply with the provisions of any applicable City codes, ordinances, regulations, standards, procedures, permits or approvals, as from time to time amended; provided, however, that in the event of a conflict or inconsistency between any such provisions and this Franchise, the express terms and conditions of this Franchise shall govern. The express terms and conditions of the Franchise constitute a valid and enforceable contract between the Parties.

2.3 Upon the effective date of this Ordinance and acceptance of such Ordinance and Franchise by PSE, all prior franchises between the City and PSE, or its predecessors in interest, which it has acquired for the distribution and sale of electrical energy shall be deemed repealed.

### Section 3. Non-Franchise Area City Property

3.1 This Franchise shall not convey any right to PSE to install Facilities on or to otherwise use City-owned or leased properties or easements outside the Franchise Area.

3.2 Existing Facilities installed or maintained by PSE in accordance with prior franchise agreements on public grounds and places within the City (but which are not a part of the Franchise Area as defined by this Franchise) may be maintained, repaired and operated by PSE at the location where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to the provisions of any applicable City codes, ordinances, regulations, standards, procedures and/or permits, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

### Section 4. Nonexclusive Franchise

4.1 This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises upon, under and across the Franchise Area which do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area for any lawful purpose or affect the jurisdiction of the City over the same or any part thereof.

4.2 The City reserves the right to acquire, construct, own, operate and maintain a municipal electric utility to serve all or any portion of the City, at any time during the term of this Franchise and to fully exercise such right in accordance with applicable law.

### Section 5. Noninterference of Facilities/Restoration

5.1 PSE's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities. Any relocation of PSE Facilities that may be necessary to accommodate a Third Party shall be subject to Section 7 below.

5.2 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE's Facilities within the Franchise Area, restore the surface of the Franchise Area and any other City property within the Franchise Area which may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable City codes, ordinances, regulations, standards and procedures, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

5.3 The City may require PSE to post an appropriate bond, as determined by the City, to ensure satisfactory restoration of the Franchise Area following the completion of PSE's work therein. In lieu of a separate bond for routine individual projects involving work in the Franchise Area, PSE may satisfy the City's bond requirements by posting a single on-going performance bond.

5.4 All survey monuments which are disturbed or displaced by PSE in its performance of any work under this Franchise shall be referenced and restored by PSE, as per WAC 332-120, as from time to time amended, and all pertinent federal, state and local standards and specifications.

5.5 All work by PSE pursuant to this Section shall be performed in accord with the permit(s) issued by the City, together with the laws of the State of Washington, the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

#### Section 6. Undergrounding of Facilities

6.1 PSE acknowledges that the City desires to promote a policy of undergrounding of Facilities within the Franchise Area. The City acknowledges that PSE provides electrical service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to and in accordance with such Tariffs, PSE will cooperate and participate with the City in the formulation of policy and development of an underground management plan with respect to PSE aerial Facilities within the City of Bellevue.

6.2 All new Facilities, of 34.5 kV or less, installed within the Franchise Area during the term of this Franchise shall be located underground; provided that installation of cabinet enclosed switches, transformers and similar equipment will be permitted and installed pursuant to the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise and subject to and accordance with any applicable Tariffs on file with the WUTC.

6.3 If, during the term of this Franchise, the City shall direct PSE to underground existing Facilities (of 34.5 kV or less) within the City, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.

#### Section 7. Relocation of Facilities

7.1 Whenever the City causes the construction of any Public Works Project within the Franchise Area, or on public grounds and places described in Section 3.2, and such construction necessitates the relocation of PSE's Facilities from their existing location within the Franchise Area or on such public grounds and places, such relocation will be at no cost to the City.

7.2 The City and PSE shall work cooperatively to accomplish any such relocation of PSE's Facilities consistent with procedures contained in a Memorandum of Understanding, mutually agreed to, and as from time to time amended by mutual agreement of the Parties.

7.3 In the event an emergency posing a threat to public safety or welfare requires the relocation of PSE's Facilities within the Franchise Area, the City shall give PSE notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, PSE shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

7.4 Subject to Section 7.5, whenever any Third Party requires the relocation of PSE's Facilities to accommodate work of such Third Party within the Franchise Area or on such public grounds and places described in Section 3.2, then PSE shall have the right as a condition of any such relocation to require payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

7.5 Any condition or requirement imposed by the City upon any Third Party (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of PSE's Facilities within the Franchise Area shall be a condition or requirement causing relocation of PSE's Facilities to occur subject to the provisions of Section 7.4 above; provided, however in the event the City reasonably determines and notifies PSE that the primary purpose of imposing such condition or requirement upon such Third Party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Franchise Area on the City's behalf and consistent with the City's Capital Investment Plan; Transportation Improvement Program; or the Transportation Facilities Program, then only those costs and expenses incurred by PSE in reconnecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such Third Party, and PSE shall otherwise relocate

its Facilities within such segment of the Franchise Area in accordance with Section 7.1.

7.6 As to any relocation of PSE's Facilities whereby the cost and expense thereof is to be borne by PSE in accordance with this Section 7, PSE may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from PSE of such written alternatives, the City shall evaluate such alternatives and shall advise PSE in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of PSE's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by PSE full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternative proposed by PSE shall be evaluated by the City in an arbitrary or capricious manner. In the event the City reasonably determines that such alternatives are not appropriate, PSE shall relocate its Facilities as otherwise provided in Section 7.1 and 7.2.

7.7 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Section 7.1 and Section 7.5 (when such Section 7.5 relocation would be considered a Section 7.1 relocation), the City shall bear the entire cost of such subsequent relocation.

7.8 Nothing in this Section 7 shall require PSE to bear any cost or expense in connection with the relocation of any Facilities existing under benefit of easement (other than City owned utility easements described in Section 1.4) or other rights not arising under this Franchise, nor shall anything in this Section 7 require the City to bear any such cost or expense. Nothing in this Section 7 shall be construed to be a waiver of any right of either PSE or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

#### Section 8. Records of Installation and Planning

8.1 Upon the City's reasonable request, PSE shall provide to the City copies of any plans prepared by PSE for potential improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

8.2 Upon the City's reasonable request, PSE shall provide to the City copies of available drawings in use by PSE showing the location of its Facilities at specific locations within the Franchise Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location. Further, the City and PSE shall work cooperatively, consistent with a Memorandum of Understanding (hereby incorporated by reference) mutually agreed to and as from

time to time amended by mutual agreement of the Parties, to pursue changes in applicable law which would facilitate provision by PSE to the City of such drawings of PSE's Facilities.

8.3 Upon the City's reasonable request, in connection with the design of any Public Works Project, PSE shall verify the location of its underground Facilities within the Franchise Area by excavating (e.g., pot holing) at no expense to the City. In the event PSE performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

8.4 Any drawings and/or information concerning the location of PSE's Facilities provided by PSE shall be used by the City solely for management of the Franchise Area. The City shall take all prudent steps reasonably necessary to prevent disclosure or dissemination of such drawings and/or information to any Third Party, without the prior express consent of PSE, to the extent permitted by law.

8.5 Notwithstanding the foregoing, nothing in this Section 8 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

#### Section 9. Coordination, Shared Excavations

9.1 PSE and the City shall each exercise all best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Areas so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. PSE and the City shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

9.2 If, at any time or from time to time, either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

#### Section 10. City Use of Facilities

10.1 During the term of this Franchise, and with respect to poles that are owned by PSE (in whole or in part), the City may, subject to PSE's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned communications equipment, wires and/or fiber. The City's use of such wires or fibers

shall be for non-commercial municipal communications purposes and such use will be administered under a Joint Facilities Use Agreement between PSE and the City.

10.2 Installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable requirements as PSE may specify from time to time including, without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities.

10.3 PSE shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned communications equipment, wires and/or fiber or the installation or maintenance thereof.

10.4 PSE shall not charge the City a rental fee for the use of the poles provided, however, that nothing herein shall require PSE to bear any cost or expense in connection with any such installation and/or maintenance by the City. PSE may charge the City an administrative fee for the purposes of reviewing such joint facility installations.

#### Section 11. Dispute Resolution

11.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify PSE in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) days of its receipt of such notice, PSE shall provide written response to the City that shall acknowledge receipt of such notice and state PSE's intentions with respect to how PSE shall respond to such notice. PSE shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 11.2, or;

B. Resolve the dispute or cure the default, or;

C. Notify the City that PSE cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, PSE shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by PSE and the projected completion date. In such case, the City may set a meeting in accordance with Section 11.2.

11.2 If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with Section 11.1., then the City shall promptly schedule a meeting between the City and PSE to discuss the dispute or any alleged default. The City shall notify PSE of the meeting in writing and such



meeting shall take place not less than ten (10) days after PSE's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with Section 12 of this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

11.3 If, at the conclusion of the steps provided for in Section 11.1 and 11.2 above, the City and PSE are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or PSE (as PSE may have authority to do so) may:

A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and/or;

B. Demand arbitration, pursuant to Section 12 below, for disputes arising out of or related to Sections 2.2 (or such other sections with respect to the existence of conflicts or inconsistencies with the express terms and conditions of this Franchise and any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded), 3, 6 (except as preempted by WUTC authority), 7 (excluding project delay claims exceeding \$30,000), 8, 10, 15, 16, and 23 of this Franchise (the "Arbitrable Claims"), and/or;

C. By ordinance, declare an immediate forfeiture of this Franchise for a breach of any material, non-arbitrable, obligations under this Franchise and/or;

D. Take such other action to which it is entitled under this Franchise or any applicable law.

11.4 Unless otherwise agreed by the City and PSE in writing, the City and PSE shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

## Section 12. Arbitration

12.1 The Parties agree that any dispute, controversy, or claim arising out of or relating to the Arbitrable Claims, shall be referred for resolution to the American Arbitration Association in accordance with the rules and procedures in force at the time of the submission of a request for arbitration.

12.2 The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The Washington State Rules of Evidence shall apply in toto. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.

12.3 The arbitrators shall have the authority to award compensatory damages, including consequential damages. Such damages may include, but shall not be limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of any staff; all costs and expenses of any labor (including, but not limited to, labor of any contractors and/or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general administrative costs and expenses, and other costs and expenses of any kind incurred in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.

12.4 Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and non-appealable, and judgment upon such award may be entered by any court of competent jurisdiction.

12.5 Except as provided in Section 12.7 below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the arbitration, copies of any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party.

12.6 Except as provided in Section 12.7 below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.

12.7 Notwithstanding the foregoing Sections 12.5 and 12.6, in the event either Party is found during the term of this Franchise to be the prevailing party in

any two (2) arbitration proceedings brought by such Party pursuant to this Section 12, or under any Memorandum of Understanding provided for in Sections 7.2, 8.2 and 15.3 of this Franchise or any other Memorandum of Understanding between the Parties that provides therefore, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by them in which they are found to be the prevailing party.

12.8 In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

### Section 13. Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City or PSE to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder for non-Arbitrable Claims. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or PSE to recover monetary damages for such violations by the other Party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### Section 14. Indemnification

14.1 PSE shall indemnify, defend and hold the City, its agents, officers or employees harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, and then only to the extent of, the willfully tortuous or negligent acts or omissions of PSE or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to PSE by this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.

14.2 PSE's indemnification obligations pursuant to this Section 14 shall include assuming potential liability for actions brought by PSE's own employees and the employees of PSE's agents, representatives, contractors, and subcontractors even though PSE might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of PSE's exercise of the rights set forth in this

Agreement. The obligations of PSE under this section have been mutually negotiated by the Parties hereto, and PSE acknowledges that the City would not enter into this Agreement without PSE's waiver thereof. To the extent required to provide this indemnification and this indemnification only, PSE waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

14.3 In the event any matter (for which the City intends to assert its rights under this Section 14) is presented to or filed with the City, the City shall promptly notify PSE thereof and PSE shall have the right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action is started against the City based upon any such matter, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

#### Section 15. Vegetation Management Plan

15.1 The Parties recognize that any appropriate vegetation management plan should adequately balance safety, reliability, vegetation health and community aesthetic concerns and the clearance between vegetation and PSE's Facilities necessary for public safety and operational reliability.

15.2 PSE will coordinate its vegetation management activities within and/or adjacent to the Franchise Area with appropriate City departments, including Transportation, Fire and Parks. On an annual basis PSE will provide to the City a proposed vegetation management plan. Thereafter, upon the request of the City, and no more often than quarterly, PSE will meet with the City to coordinate the implementation of the plan; provided however that such commitment to coordinate with the City shall not limit PSE's right under this Franchise or duty under law to remove or trim vegetation which, due to proximity to PSE's Facilities, poses an imminent risk to public safety.

15.3 Trimming and removal of vegetation within and/or adjacent to the Franchise Area will be performed using standard practices accepted by the International Society of Arboriculture addressing vegetation health and aesthetics and consistent with practices contained in a Memorandum of Understanding mutually agreed to by, and from time to time amended by mutual agreement of, the Parties.

15.4 PSE will, in coordination with City staff, identify vegetation species appropriate for location in proximity to PSE Facilities and shall cooperatively act with the City to promote use of such identified species in proximity to those Facilities.

#### Section 16. Emergency Management

Annually, upon the request of the City, PSE will meet with the City Fire/Emergency Preparedness Department to coordinate emergency management operations and, at least once a year, at the request of the City, PSE personnel will actively participate with either the Fire Department or the City Emergency Operations Center in emergency preparedness drills or planning sessions.

#### Section 17. Moving Buildings Within the Franchise Area

17.1 If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with PSE for the temporary adjustment of PSE's wires to accommodate the moving or removal of such building or other object. Such necessary arrangements with PSE shall be made, to PSE's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object.

17.2 In such event, PSE shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

A. The moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with PSE's business; and

B. The person or entity other than the City obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and hold PSE harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

#### Section 18. Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon PSE and the City. PSE may not assign or otherwise transfer its rights, privileges, authority and Franchise herein conferred without the prior written authorization and approval of the City, which shall not be unreasonably withheld. The City hereby authorizes and approves the mortgage by PSE of its rights, privileges, authority and Franchise in and under this Franchise to the trustee for its bondholders.

## **Section 19. Severability and Survival**

19.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

19.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 18 above, the Parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

## **Section 20. Amendments to Franchise**

20.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

- A. References this Franchise; and
- B. States that it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

## **Section 21. No Third Party Beneficiary**

Nothing in this Franchise shall be construed to create or confer any right or remedy upon any person(s) other than the City and PSE. No action may be commenced or prosecuted against any Party by any Third Party claiming as a Third Party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any Third Party to either Party.

## **Section 22. Insurance**

22.1 PSE shall procure and maintain for the duration of the Franchise,

insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees. PSE shall provide evidence of self-insurance and/or an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, and such self-insurance and/or insurance certificate shall evidence the following minimum coverages:

A. Comprehensive general liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, written on an occurrence basis, with limits not less than:

- (1) \$2,000,000 for bodily injury or death to each person;
- (2) \$2,000,000 for property damage resulting from any one accident; and
- (3) \$2,000,000 for general liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000;

22.2 Any deductibles or self-insured retentions must be declared to the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

22.3 PSE's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

22.4 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, PSE shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

#### Section 23. Notice of Tariff Changes

PSE shall, when making application for any changes in tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide City with a copy of the submitted application within five (5) days of filing with the WUTC. PSE shall further provide the City with a copy of any actual approved tariff(s) affecting the provision of this Franchise.

#### Section 24. Force Majeure

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

#### Section 25. Memorandum of Understanding

25.1 The Parties agree to develop and maintain in effect for the term of this Franchise certain Memoranda of Understanding as provided for in Sections 7.2, 8.2 and 15.3 of this Franchise. These Memoranda of Understanding shall, among other things, detail the expectation of the Parties regarding their respective responsibilities and performance relating to the subject matter thereof.

25.2 In the event any of the Memoranda of Understanding provided for by this Section 25 are not in place (by mutual agreement of the Parties) within 180 days of effective date of this Ordinance then the City may, at its option and by ordinance, declare a forfeiture of this Franchise.

25.3 In the event of performance by either Party which is, or which may be asserted or construed to be, inconsistent with the expectations contained in any of the Memoranda of Understanding provided for by this Section 25, such performance shall



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not be, nor shall such performance be construed to be, a failure to perform any material obligation under this Franchise for the purposes of Section 11 and Section 12 of this Franchise.

Section 26. Effective Date

This Ordinance shall be effective on May 14, 2003, having first been submitted to the City Attorney, having been introduced to the City Council not less than five days before its passage; having been passed at a regular meeting of the City Council by an approving vote of at least a majority thereof; and having been published at least once in a newspaper of general circulation in the City.

(SEAL)

Connie Marshall  
Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Richard L. Andrews  
Richard L. Andrews, City Attorney

Attest:

Myrra L. Basich  
Myrra L. Basich, City Clerk

Published May 9, 2003

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF BELLEVUE, WASHINGTON

In the matter of the application  
of Puget Sound Energy, Inc., a  
Washington corporation, for a  
franchise to construct, operate  
and maintain facilities in, upon,  
over under, along, across and  
through the franchise area of the  
City of Bellevue, King County,  
Washington

Franchise Ordinance No. 5443

ACCEPTANCE

WHEREAS, the City Council of the City of Bellevue, King County, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 5443, bearing the date of May 5, 2003; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on May 18, 2003, from said City of Bellevue, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Bellevue, King County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Mark Bowman thereunto duly authorized on this 18<sup>th</sup> day of May, 2003.

ATTEST:

PUGET SOUND ENERGY, INC.

By:

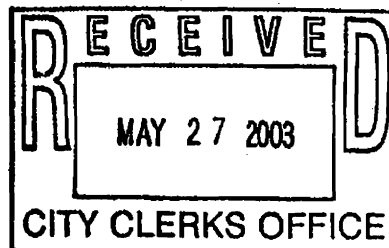
Jason VanAnt  
Manager - Municipal Land Planning

Mark Bowman  
Director Customer Operations

Copy received for City of Bellevue

on May 27, 2003

By: Margaret L. Basich  
City Clerk



REC NO. 34154  
 CITY OF BELLEVUE  
 DATE 6/25/03  
M. TORMO  
 CITY CLERK'S OFFICE

**Memorandum of Understanding  
 Facilities Relocation Procedure**

This Memorandum of Understanding is entered into between the City of Bellevue (the "City") and Puget Sound Energy ("PSE"), also referred to herein together as the "Parties". 03-397  
Ord 5443

WHEREAS, the City and PSE have entered into a Franchise Agreement, Ordinance No. 5443 ("the Franchise"), and

WHEREAS, the City and PSE recognize the value of defining and developing their working relationship through cooperation, planning, communication and coordination, and

WHEREAS, the City and PSE desire to establish a mutually agreed procedure for relocation of PSE's Facilities that are subject to the Franchise,

NOW, THEREFORE, it is hereby understood and agreed between the Parties as follows:

This Memorandum of Understanding is intended by the Parties to be supplemental to the Franchise to the extent it contains procedures for the relocation of PSE's Facilities which are subject to the Franchise. The Facilities Relocations Procedures provided herein have been agreed to by the Parties for the purpose of implementing the respective obligations of the Parties contained in Section 7 of the Franchise with respect to projects specifically identified in the City CIP and identified for project funding in the City's biennial budget.

Unless specifically defined otherwise in this Memorandum of Understanding, all defined terms herein will have the same meaning as when used in the Franchise.

This Memorandum of Understanding may be amended by mutual agreement of the Parties. Any amendment must be set forth in writing, signed by the Parties, and specifically state that it is an amendment to this Memorandum of Understanding.

The Parties intend that, notwithstanding circumstances beyond the control of the Parties, required relocations of PSE's Facilities subject to the Franchise will be performed by the Parties in accordance with the Facilities Relocation Procedures provided herein. The Parties acknowledge that the Facilities Relocation Procedures, including specifically the time requirements provided therein, may, from time to time, require amendment, or as mutually agreed by the Parties deviation therefrom, to reasonably accommodate circumstances beyond the control of either Party. In such event, the Parties will make their respective best efforts to reasonably amend this Memorandum of Understanding, or to reasonably deviate from the procedures contained herein, as the Parties may mutually agree upon.

This Memorandum of Understanding, as from time to time amended, will remain in full force and effect for the term of the Franchise, unless sooner terminated by mutual agreement of the Parties.

### **Facilities Relocation Procedure**

1. Reasonably well in advance of, but in no case less than 180 days before (unless otherwise mutually agreed by the Parties or otherwise necessitated by circumstances beyond the control of the Parties) the City desires PSE to commence construction of a required relocation of PSE's Facilities which are subject to the Franchise, the City will provide PSE with a written scope of work for the City's related Public Works Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Public Works Project, (b) a list of the key milestone dates for the Public Works Project including the projected dates by which construction of the required relocation should be commenced and completed by PSE, and (c) two (2) copies of reasonably detailed drawings showing the planned improvements for the Public Works Project (collectively the "Scope of Work"). The City will also provide PSE with a copy of the relevant electronic file(s) for the Scope of Work in a mutually agreed electronic format.

2. Within a reasonable time, but in no case later than sixty (60) days (unless otherwise mutually agreed by the Parties) after receipt by PSE of the City's Scope of Work, PSE will prepare and provide to the City: (a) a proposed design for the relocated Facilities that accommodates the planned improvements for the Public Works Project, and (b) a proposed schedule for completion of the relocation which, to the extent reasonably practicable, reflects the applicable key milestone dates specified in the Scope of Work and provides for completion of the required relocation by the projected relocation completion date provided by the City in the Scope of Work. The proposed relocation design and proposed relocation schedule will be based upon the then current Scope of Work provided to PSE by the City.

3. Within fifteen (15) days after the City's receipt of the proposed relocation design and the proposed relocation schedule from the PSE, the City and PSE will begin meeting, as necessary, in order to (a) review the Scope of Work, (b) review the proposed relocation design, (c) review the proposed relocation schedule, and (d) make any changes thereto necessary to create a final Scope of Work, final relocation design, and final relocation schedule (collectively the "Relocation Plan") reasonably acceptable to both Parties.

4. The Relocation Plan will be accepted in writing by authorized representatives of both Parties not less than sixty (60) days prior to the date PSE is to commence relocation construction contained therein. Once accepted by the Parties, the Relocation Plan may thereafter be changed or amended only in accordance with the change procedures set forth below.

5. The City will promptly notify PSE of any revision(s) and/or addition(s) to the planned improvements for the City's Public Works Project which may impact the design of or location for PSE's Facilities contained in the Relocation Plan.

6. The City will, not less than fifteen (15) days prior to the date contained in the Relocation Plan that PSE is to commence relocation construction, provide a written notice to PSE to proceed with construction of the required relocation as provided in the Relocation Plan.

7. After receipt of the City's notice to proceed, PSE will relocate such Facilities within the Franchise Area at no cost to the City as provided in the Relocation Plan.

8. The City will be responsible for coordinating the PSE relocation work with all other work to be performed in connection with the Public Works Project and any associated planned improvements. The Parties will work together in an effort to mitigate the costs of the relocation, including, without limitation, identifying ways to accommodate PSE's Facilities within the Franchise Area.

9. Upon request of the City, and in any event as specified in the Relocation Plan, PSE will provide periodic progress reports to the City.

10. Any actual reasonable costs incurred by the City or by any contractor working for the City, caused by construction delays reasonably attributable to a failure by PSE to adhere to the Relocation Plan, including the date contained therein by which PSE is to complete the required relocation, will be the sole responsibility of PSE unless such failure is excused, as provided for in Section 23, Force Majeure, of the Franchise.

11. In the event the City terminates or abandons the Public Works Project, such that relocation of PSE Facilities will not be or would not have been necessary, the City will pay PSE for all actual reasonable costs incurred by PSE in performance of the relocation including any necessary design and/or construction work, plus any costs incurred by PSE for materials and other items ordered or procured by PSE (with the prior authorization of the City) in order to meet the final relocation schedule in the Relocation Plan.

12. Either Party may, at any time, by written request to the other Party, request changes to the Relocation Plan. No request for change will be unreasonably denied by either Party. A Request for Change will be effective and binding upon the Parties only when signed by an authorized representative of each Party. The Parties will meet and work in good faith with the objective of reaching written agreement on mutually acceptable adjustments to the Relocation Plan. Notwithstanding resolution of any dispute and/or mutual agreement concerning requested changes to the Relocation Plan, each Party will, if requested by the other Party and to the extent reasonably practicable, proceed with their respective work in accordance with the Relocation Plan, subject to any mutually agreed change(s), to

accommodate the Public Works Project and avoid delays related thereto. In the event the Parties so proceed, the Parties will thereafter make their respective best efforts to resolve any dispute and/or to reach mutual agreement on any requested change(s) and/or the results of such proceeding notwithstanding such prior agreement.

13. Any dispute, disagreement or claim arising out a required relocation of PSE's Facilities must first be presented to and considered by the Parties. A Party who wishes to present such dispute, disagreement or claim will notify the other Party and pursue resolution of the dispute, disagreement or claim consistent with Sections 11 and 12 of the Franchise and as limited by Section 25 of the Franchise. All negotiations pursuant to these procedures for the resolution of disputes will be confidential and will be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

Agreed and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2003

PUGET SOUND ENERGY, INC.

CITY OF BELLEVUE

Jason VanAnt - Manager Municipal Land Planning  
(Title)

Eric O'Leary  
City Manager  
Deputy

Mark LiBouman Director of Customer Operations  
(Title)

Approved as to form:

R. J.alley  
Deputy City Attorney

REC NO. 34156  
CITY OF BELLEVUE  
DATE 6/25/03

**Memorandum of Understanding**  
**Vegetation Management Procedure**

CITY CLERK'S OFFICE  
03-397

This Memorandum of Understanding is entered into between the City of Bellevue (the "City") and Puget Sound Energy ("PSE"), also referred to herein together as the "Parties". add 5443

WHEREAS, the City and PSE have entered into a Franchise Agreement, Ordinance No. 5443 ("the Franchise"), and

WHEREAS, the City takes exceptional pride in the care of trees within the City; whether located within a native area or along a landscaped street, all trees should be trimmed with the same care and attention to detail, and

WHEREAS, the City and PSE recognize the value of defining and developing their working relationship through cooperation, planning, communication and coordination, and

WHEREAS, the City and PSE desire to establish mutually agreed practices for the performance of vegetation management within and adjacent to the Franchise Area as defined by the Franchise.

NOW, THEREFORE, it is hereby understood and agreed between the Parties as follows:

This Memorandum of Understanding is intended by the Parties to be supplemental to the Franchise to the extent it contains practices for the performance of vegetation management within and adjacent to the Franchise Area.

Unless specifically defined otherwise in this agreement, all defined terms herein will have the same meaning as when used in the Franchise.

This Memorandum of Understanding may be amended by mutual agreement of the Parties. Any amendments must be set forth in writing, signed by both Parties, and specifically state that it is an amendment to this Memorandum of Understanding.

This Memorandum of Understanding, as from time to time amended, will remain in full force and effect for the term of the Franchise, unless sooner terminated by mutual agreement of the Parties. These provisions are agreed to by the Parties for the purpose of implementing Section 15 of the Franchise.

**Vegetation Management Procedure**

1. The City's Natural Resource Manager ("NRM"), or his/her designee, should be notified at least one week prior to any vegetation management work being conducted within City limits; except that emergency work can be done the same day providing that the NRM is contacted either by phone or e-mail. If the NRM is not

available, a message can be left and City staff will review the nature of the work on the next available business day.

2. All pruning should be conducted under current International Society of Arboriculture standards. Crew foreman will be aware of these standards and ensure that they are implemented for all pruning conducted by or for PSE within the City.

3. PSE or its contractors should trim trees according to species growth habits. Crew foreman will be aware of different tree species and understand their corresponding growth habits.

4. In the event trees need to be trimmed within and/or adjacent to the Franchise Area or within City owned property (including native areas and developed parks), the City shall be notified ahead of time and shall be provided the opportunity to have the trees removed entirely. Replacement trees can be negotiated between the NRM and PSE or their contractor on a case by case basis.

5. All debris associated with line clearance tree trimming and/or removal work within or adjacent to the Franchise Area or within City owned property (including native areas and developed parks) will be chipped and removed by PSE or its contractor from the site at no cost to the City. 'Drop and Scatter' practices will require prior approval from the NRM.

6. When trees are heavily trimmed or removed within native areas, the work should be performed in such a way as to avoid damage to other trees within that area. If additional trees are accidentally damaged during such work, PSE, or its contractor, will use its best efforts to appropriately prune any such damaged trees. The NRM is to be contacted immediately in the event of any unplanned damages to City owned trees.

7. Climbing trees with gaffs or spikes is strongly discouraged on any deciduous, hardwood or thin bark tree species unless the tree is to be removed.

8. A knowledgeable PSE representative will stay in close communication with the NRM while vegetation management work is performed within the City. Periodic performance reviews should be conducted at the request of the NRM.

9. Any dispute, disagreement or claim arising out of PSE's vegetation management practices must first be presented to and considered by the Parties. A Party who wishes to present such dispute, disagreement or claim will notify the other Party and pursue resolution of the dispute, disagreement or claim consistent with Sections 11 and 12 of the Franchise and as limited by Section 25 of the Franchise.



All negotiations pursuant to these procedures for the resolution of disputes will be confidential and will be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

Agreed and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2003

PUGET SOUND ENERGY, INC.

CITY OF BELLEVUE

Jason Van Wert - Manager Municipal Land Planning  
(Title)

Eric Boy  
City Manager

Mark L. Bouman Director of Customer Operations  
(Title)

Approved as to form:

R. J. Kelly  
Deputy City Attorney

REC NO. 34155  
CITY OF BELLEVUE  
DATE 6/25/03  
M-TOMNOW  
CITY CLERK'S OFFICE

**Memorandum of Understanding  
Records of Facilities within the Franchise Area**

This Memorandum of Understanding is entered into between the City of Bellevue (the "City") and Puget Sound Energy ("PSE"), also referred to herein at the "Parties". 03-397  
Ord. 5443

WHEREAS, the City and PSE have entered into a Franchise Agreement, Ordinance No. 5443 ("the Franchise"), and

WHEREAS, PSE recognizes and acknowledges the City's need to have reasonable access to available drawings with sufficient detail to show the approximate location of PSE's Facilities within the Franchise Area (as defined in the Franchise), for the City's use in management of the Franchise Area, and

WHEREAS, the City recognizes and acknowledges PSE's concern for security and liability relating to the release of such information, to third parties, and

WHEREAS, existing law subjects such information in the possession of the City to requirement(s) for public disclosure, and

WHEREAS, the Parties desire to work cooperatively to address their respective interests concerning such information with the intention to facilitate potential future amendment of the Franchise as it relates to this issue,

NOW, THEREFORE, it is hereby understood and agreed between the Parties as follows:

This Memorandum of Understanding is intended by the Parties to be supplemental to the Franchise to the extent it contains provisions intended to facilitate future amendment of the Franchise (Section 8.2) to provide for provision by PSE to the City of PSE's available drawings showing the approximate location of PSE's Facilities within and throughout the entire Franchise Area.

Unless specifically defined otherwise in this agreement, all defined terms herein will have the same meaning as when used in the Franchise.

This Memorandum of Understanding may be amended by mutual agreement of the Parties. Any amendments must be set forth in writing, signed by both Parties, and specifically state that it is an amendment to this Memorandum of Understanding.

This Memorandum of Understanding, as from time to time amended, will remain in full force and effect until the earlier of the amendment of the Franchise as contemplated by this Memorandum of Understanding, or the expiration of the Franchise, or the termination of the Franchise (as provided for therein and herein), unless sooner terminated by mutual agreement of the Parties.

1. PSE will use its best efforts and in good faith pursue, as soon as reasonably practicable, the enactment of appropriate state legislation (and also federal legislation if appropriate) to exempt from public disclosure information concerning the location of PSE's Facilities within and throughout the Franchise Area.

2. The City will use its best efforts and in good faith coordinate and consult with PSE in its pursuit of such exemption.

3. As soon as reasonably practicable following the effective enactment of such legislation, the Parties intend and hereby agree to amend the Franchise to provide for provision by PSE to the City of PSE's available drawings showing the approximate location of PSE's Facilities within and throughout the Franchise Area, consistent with such legislation. The Parties intend and hereby agree that such amendment shall replace Section 8.2 of the Franchise substantially as follows:

Upon the City's reasonable request (such requests not to occur more often than two (2) years apart), PSE shall provide to the City copies of available drawings in use by PSE showing the location of its Facilities within and throughout the Franchise Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location. PSE shall provide such drawings within thirty (30) days of such request.

Provided, however, such amendment shall be revised by mutual agreement of the Parties as may be required to conform with and be made consistent with any such legislation so enacted.

4. If, PSE's best efforts notwithstanding, no appropriate legislation as contemplated by this Memorandum of Understanding has been enacted by December 31, 2006, the Parties agree that thereafter, upon the written request of the City, the Parties will, at a time and in a manner then mutually agreed by the Parties, promptly enter into negotiations to amend the Franchise to address, to the extent then reasonably practical, the matter addressed by this Memorandum of Understanding.

5. In the event the Parties are unable to reach mutual agreement on amendment(s) to Section 8 (or other relevant sections) of the Franchise within 180 days after such negotiations commence, then the Parties hereby agree that the City will have the right, notwithstanding any language in the Franchise to the contrary, at its option and by ordinance, to terminate the Franchise, effective eighteen (18) months from the effective date of such termination ordinance. In the event of such termination, the Parties hereby agree to promptly enter into negotiations, at a time and in a manner then mutually agreed by the Parties, on a new franchise agreement to replace the terminated Franchise.

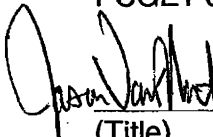

6. This Memorandum of Understanding and the respective commitments and rights of the Parties hereunder are in addition to any of the respective obligations of the Parties under the Franchise. Nothing in this Memorandum of Understanding will be deemed to alter any of the terms and conditions of the Franchise (including by not limited to Section 8 thereof), or the obligations of any Party under the Franchise, except as expressly provided for in this Memorandum of Understanding, nor shall it be construed to have waived any respective rights of the Parties under the Franchise.


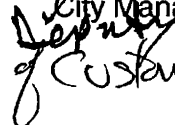
7. Any dispute, disagreement or claim arising out of this Memorandum of Understanding must first be presented to and considered by the Parties. A Party who wishes to present such dispute, disagreement or claim will notify the other Party and pursue resolution of the dispute, disagreement or claim consistent with Sections 11 and 12 of the Franchise and as limited by Section 25 of the Franchise. All negotiations pursuant to these procedures for the resolution of disputes will be confidential and will be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

Agreed and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2003

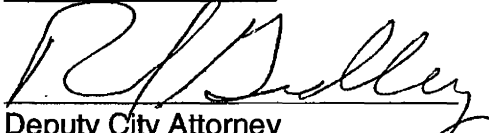
PUGET SOUND ENERGY, INC.

CITY OF BELLEVUE

  
\_\_\_\_\_  
(Title)  
Jason Van Mat - Manager Municipal Land Planning  
  
\_\_\_\_\_  
(Title)  
Mark L. Boorman Director

  
\_\_\_\_\_  
City Manager  
  
Deputy  
of Customer Operations

Approved as to form:

  
\_\_\_\_\_  
Deputy City Attorney

REC. NO. 34157  
CITY OF BELLEVUE  
DATE 6/25/03  
M-TAMPOL  
CITY CLERK'S OFFICE

**Memorandum of Understanding  
Performance and Reliability Reporting**

CCO FILE# 03-397

This Memorandum of Understanding is entered into between the City of ORD 5443 Bellevue (the "City") and Puget Sound Energy ("PSE"), also referred to herein at the "Parties".

WHEREAS, the City and PSE recognize the value of defining and developing their working relationship through cooperation, planning, communication and coordination, and

WHEREAS, the City and PSE desire to establish mutually agreed provisions for reporting of certain performance and reliability measures,

NOW, THEREFORE, it is hereby understood and agreed between the Parties as follows:

This Memorandum of Understanding may be amended by mutual agreement of the Parties. Any amendments must be set forth in writing, signed by both Parties, and specifically state that it is an amendment to this Memorandum of Understanding.

This Memorandum of Understanding, as from time to time amended, will remain in full force and effect for a period of ten (10) years from the date this Memorandum of Understanding was signed by the Parties, unless sooner terminated or further extended by mutual agreement of the Parties.

The performance of the Parties under this Memorandum of Understanding may become subject to regulation by the Washington Utilities and Transportation Commission. In such event the Parties agree to amend this Memorandum of Understanding so that it shall be consistent with any such regulation.

**Reporting Requirements**

PSE will use good faith efforts to maintain and improve the reliability of electrical service provided to all customers in the City. In furtherance of this objective, PSE will:

1. On an annual basis, provide to the City the System Average Interruption Frequency Index ("SAIFI") and the System Average Interruption Duration Index ("SAIDI") for PSE electric service within the City for a period that covers each of the previous five (5) years, and;
2. On an annual basis, identify and report to the City any individual circuits serving the City having a SAIFI and/or SAIDI, for the preceding year, that is greater than the PSE system SAIFI and/or SAIDI for the same period and identify any corrective actions that may be taken by PSE to improve any such circuits, and;

3. On an annual basis, report to the City information concerning all non-scheduled outages (and resulting service interruptions to customers) within the City, identifying the individual circuit, cause, equipment, duration and number of customers affected by the outage. Such information shall be provided solely for the information of the City for the purpose of facilitating further inquiry by the City to PSE concerning particular circuits and/or outages of interest to the City. The provision of such information by PSE shall not otherwise create or imply any other commitment or obligation by PSE. The City will not provide such information to any third party without prior notice to PSE of the City's intention to do so.

### **Dispute Resolution**

In the event of any dispute with respect to performance under this Memorandum of Understanding, the City shall notify PSE in writing, stating with reasonable specificity the nature of the dispute. Within seven (7) days of receipt of such notice, PSE shall provide written response to the City that shall acknowledge receipt of such notice and state PSE's intentions with respect to how PSE shall respond to such notice. PSE shall have thirty (30) days from its receipt of such notice to:

1. Respond to the City, contesting the City's assertion(s) as to the dispute and requesting a meeting, as provided below, or
2. Resolve the dispute, or;
3. Notify the City that PSE cannot resolve the dispute within thirty (30) days, due to the nature of the dispute. Notwithstanding such notice, PSE shall promptly take all reasonable steps to begin to resolve the dispute and notify the City in writing and in detail as to the actions that will be taken by PSE and the projected completion date. In such case, the City may set a meeting, as provided below.

If any dispute is not resolved or a meeting is requested or set, then the City shall promptly schedule a meeting between the City and PSE to discuss the dispute. The City shall notify PSE of the meeting in writing and such meeting shall take place not less than ten (10) days after PSE's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute and reach agreement on any corrective action to be taken by either Party. Any dispute (including any dispute concerning any corrective action to be taken) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with this Memorandum of Understanding. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and

federal rules of evidence.

Any dispute not resolved by the Parties as described above may be submitted to binding arbitration as provided herein below. However, the Parties specifically do not waive and hereby reserve any right they may have for access to the courts and to pursue any other recourse and remedies under applicable law.

Unless otherwise agreed by the Parties in writing, the Parties shall, as may reasonably be practicable, continue to perform their respective obligations as provided herein during the pendency of any dispute.

### **Arbitration**

The Parties agree that any dispute, controversy, or claim arising out of or relating to performance under this Memorandum of Understanding, shall be referred for resolution to the American Arbitration Association in accordance with the rules and procedures in force at the time of the submission of a request for arbitration.

The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The Washington State Rules of Evidence shall apply in toto. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.

The arbitrators shall have the authority to award compensatory damages, including consequential damages. Such damages may include, but are not limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of staff; all costs and expenses of any labor (including, but not limited to, labor of any contractors and / or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general administrative costs and expenses, and other costs and expenses of any kind incurred by the City in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.

Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and non-appealable, and judgment upon such award may be entered by any court of competent jurisdiction.

Except as provided below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the arbitration, copies of

any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party, is borne by that Party.

Except as provided below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.

Notwithstanding any of the foregoing, in the event either Party shall be found to be the prevailing party in any two (2) arbitration proceedings brought by such Party pursuant to this Memorandum of Understanding, or any other agreement between the Parties which provides therefore, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by them in which they are found to be the prevailing party.

In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

Agreed and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2003

PUGET SOUND ENERGY, INC.

CITY OF BELLEVUE

Jason VanAnt Manager Municipal Land Planning  
(Title)

ER O'Leary  
City Manager

Mark L. Boorman Director of Customer Operations  
(Title)

Approved as to form:

R. L. Kelly  
Deputy City Attorney



CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8582

A RESOLUTION authorizing the execution of the renewal of the City's current Electrical Franchise Agreement with Puget Sound Energy.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute the renewal of the City's current Electrical Franchise Agreement with Puget Sound Energy, a copy of which agreement has been given Clerk's Receiving No. \_\_\_\_\_.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013, and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
Conrad Lee, Mayor

Attest:

\_\_\_\_\_  
Myrna L. Basich, City Clerk